

Remarks

The second restriction requirement mailed March 23, 2002 has been received and reviewed. Applicants elect Group I which includes claims 1, 5-6, 9-15 and 28-29, without traverse. Claims 4, 7, 8 and 17 through 19 are to be canceled without prejudice or disclaimer. Applicants specifically reserve the right to file a related application claiming the non-elected subject matter.

The Office Action also required applicants to "elect a specific activating substance" as a species of the invention. Of the claims remaining in the application, the Office Action indicated that claims 1, 5, 9-15, 17 through 19, 28 and 29 are generic. Dependent claim 6 lists a number of substances from which are characterized as different species in the Office Action, and from which an election of species is required.

Applicants respectfully submit that no such requirement is needed. Applicants respectfully submit that the activating substances listed in claim 6 share a common property, the capacity to induce dendritic cell activation (*see, e.g.* the background of the invention in the specification at paragraph 0003). As described in the specification glucocorticoid hormone alters the dendritic cell activation effect of two such substances: CD8-40L fusion protein and LPS (*see, example 1, paragraph 0030*). It is therefrom submitted that the present application should include related activating substances.

In the event that the species restriction is not withdrawn, applicants provisionally elect a CD8-40L fusion protein as a specific activating substance, without traverse.

It is noted that 37 C.F.R. § 1.141(a) states:


Two or more independent and distinct inventions may not be claimed in one national application, **except that more than one species of an invention, not to exceed a reasonable number, may be specifically claimed in different claims in one national application, provided the application also includes an allowable claim generic to all the claimed species** and all the claims to species in excess of one are written in dependent form (Sec. 1.75) or otherwise include all the limitations of the generic claim.

Applicants thus note that the generic claims each read upon the various species identified in the Office Action. Applicants wish to proceed under rule 141 and upon the allowance of a generic claim will request claims to the different species to all similarly be allowed.

Conclusion

If questions exist after consideration of the foregoing, the Office is kindly requested to contact applicants' attorney at the number given below.

Respectfully submitted,



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